

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 13, 2009 Session

KRISTINE DIRKS v. CLINTON TUDORS

Appeal from the Circuit Court for Hamilton County
No. 06C503 Jacqueline S. Bolton, Judge

No. E2008-01384-COA-R3-CV - FILED MAY 18, 2009

On March 22, 2006, Kristine Dirks filed an action styled “Complaint for Damages” against Clinton Tudors, a trooper with the Tennessee Highway Patrol, arising out of a stop and arrest on September 11, 2003.¹ The trial court granted Trooper Tudors’ motion for summary judgment. The plaintiff appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Charles P. Dupree, Chattanooga, Tennessee, for the appellant, Kristine Dirks.

Robert E. Cooper, Jr., Attorney General & Reporter; Michael E. Moore, Solicitor General; and Rebecca Lyford, Assistant Attorney General, Civil Rights and Claims Division; Nashville, Tennessee, for the appellee, Clinton Tudors.

OPINION

I.

On September 11, 2003, Trooper Tudors stopped the plaintiff on Interstate 75 after “clocking” her at 88 mph in a 70 mph zone. She was arrested, jailed “for about five hours,” and charged with speeding, resisting arrest, and failing to notify of her change of address from Indiana to Tennessee. On July 22, 2005, the plaintiff reached a plea agreement with the State in the Hamilton County Criminal Court, by the terms of which the charges of resisting arrest and failure to notify of change of address were dismissed in exchange for the plaintiff’s plea of guilty to the

¹The complaint alleges that she was stopped on *August* 11, 2003. The record is clear that the incident occurred on *September* 11, 2003. In any event, the precise date is not critical.

charge of speeding. Based upon the parties' agreement, the criminal court pronounced a sentence of ten days in the workhouse "suspended on [the plaintiff's] good behavior."

The plaintiff sued Trooper Tudors, individually and in his official capacity, seeking money damages for (1) assault and battery; (2) false arrest; (3) false imprisonment; (4) official oppression; (5) malicious prosecution; (6) violations of 42 U.S.C. § 1983; and (7) negligence *per se*. At a hearing in the trial court on January 14, 2008, the plaintiff's counsel advised the court that his client was dismissing all claims against Trooper Tudors in his official capacity.

Trooper Tudors filed a motion for summary judgment. The trial court granted the motion holding (1) that the plaintiff's claims for assault and battery, false arrest, false imprisonment, and pursuant to 42 U.S.C. § 1983, were barred by the applicable statute of limitations; (2) that the claim of malicious prosecution as to the charges of resisting arrest and failure to notify were lacking an essential element of the claim, *i.e.*, termination of the underlying charges in the plaintiff's favor; and (3) that the law does not provide a private cause of action for official oppression and, in any event, such a claim would be barred by the one-year statute of limitations.²

On this appeal, the plaintiff only challenges the trial court's rulings on her claims for (1) false arrest, (2) malicious prosecution, (3) official oppression, and (4) 42 U.S.C. § 1983 – based upon false arrest and malicious prosecution.

II.

The plaintiff's claim for false arrest accrued on September 11, 2003, the date she was stopped and taken into custody. See *Simmons v. Gath Baptist Church*, 109 S.W.3d 370, 373 (Tenn. Ct. App. 2003). Tenn. Code Ann. § 28-3-104(a)(1) (2000) prescribes a one-year statute of limitations for suits seeking damages for personal injury. The trial court was correct in determining that the plaintiff's false arrest claim filed March 22, 2006, is time-barred.

As to the plaintiff's multiple claims for malicious prosecution, including the one under 42 U.S.C. § 1983, the record clearly shows that an essential element of a malicious prosecution claim – termination of the underlying charge in the plaintiff's favor – is lacking in this case. Here, the resisting arrest charge and failure to notify charge were dismissed pursuant to a plea agreement between the plaintiff and the State, by the terms of which the plaintiff pleaded guilty to the charge of speeding. A dismissal by way of compromise and settlement is not sufficient to support a plaintiff's claim that the charge was terminated in the plaintiff's favor. See *Foshee v. Southern Finance & Thrift Corp.*, 967 S.W.2d 817, 819 (Tenn. Ct. App. 1997); *Landers v. Kroger Co.*, 539 S.W.2d 130, 133 (Tenn. Ct. App. 1976). See also *Restatement of Torts 2d*, §660 (1977).

The plaintiff's claim for damages pursuant to 42 U.S.C. § 1983 is barred by the same one-year statute of limitations that bars her false arrest claim. See Tenn. Code Ann. § 28-3-104(a)(3). See also *Foster v. Tennessee*, 150 S.W.3d 166, 168 (Tenn. Ct. App. 2004). As previously noted,

²The court made additional rulings that are not germane to the issues on appeal.

a plaintiff's claim based upon an arrest accrues on the date of arrest. *See Fox v. DeSoto*, 489 F.3d 227, 234-35 (6th Cir. 2007). The plaintiff's suit predicated on an alleged violation of 42 U.S.C. § 1983 filed on March 22, 2006, is untimely with respect to a triggering event on September 11, 2003.

Finally, with respect to the plaintiff's claim based upon official oppression, the applicable statute, Tenn. Code Ann. § 39-16-403 (2006) does not indicate, in any way, that a private cause of action for official oppression was contemplated by the legislature when the statute was enacted. *See Buckner v. Carlton*, 623 S.W.2d 102, 105 (Tenn. Ct. App. 1981) (finding no private cause of action under an earlier version of the statute.). Even if there were such a cause of action, it would be barred by the previously-referenced statute of limitations.

III.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the plaintiff, Kristine Dirks. This case is remanded, pursuant to applicable law, for collection of costs assessed at the trial court level.

CHARLES D. SUSANO, JR., JUDGE